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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/002,361	11/23/2001	Mark S. Pelak	MSP-2	5889

7590

04/02/2003

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EXAMINER

BUMGARNER, MELBA N

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 04/02/2003

10

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/002,361

Applicant(s)

PELAK, MARK S.

Examiner

Melba Bumgarner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 February 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 30 January 2003 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

1. Claims 1 and 7 are objected to because of the following informalities: "said axial implant abutment surface" should read –said outer axial surface— in claim 1 line 10, "said prosthesis" should read –said appliance-- in claim 1 line 12 and "said prosthesis" should read –an appliance—in claim 7 line 5, since "prosthesis" comprises all of the elements of the claims. Appropriate correction is required.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Lazzara et al. (4,988,297). Lazzara et al. discloses dental prosthesis comprising an implant abutment 110,48 affixed at a lower end to a dental implant 10, abutment having an implant abutment axis C-C (figure 1); a groove 116 in the abutment extending substantially transverse to the axis and O-ring 118, O-ring shown having a cross-sectional diameter substantially greater than the depth of the groove such that outer portion of the O-ring projects from outer axial surface of abutment; and an appliance 114 having a retainer cavity including a retainer surface matching abutment surface, a complementary groove in retainer surface shaped to closely match and receive the outer portion as seen in figure 9. The O-ring is inherently made of elastomeric material

stretched about the abutment and elastically retained in the groove. As to claim 2, the abutment includes a tapered surface. Patentable weight is not given to functional language in the claim. As to claim 3, the abutment is threadedly connected to the implant (figure 1). As to claim 4, the abutment is formed from metal (column 4 line 6). As to claims 5 and 12, the appliance is a denture or partial denture (column 6 line 1).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lazzara in view of Beatty et al. (5,476,383). Lazzara discloses a dental prosthesis that shows the limitations as described above; however, Lazzara does not show the appliance formed from porcelain fused to metal. Beatty et al. teach appliance of porcelain fused to metal (column 1 line 21). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the prosthesis of Lazzara to have porcelain fused to metal appliance. One would have been motivated to make such a modification to provide appliance that closely replicate natural dentition in appearance as taught by Beatty et al.

5. Claims 7-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gerber (2,866,285) in view of Baum (4,681,542). Gerber discloses a dental prosthesis comprising an implant abutment 9 affixed at a lower end to a dental implant 2, abutment

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having an implant abutment axis, a circumferential groove 10a in the abutment extending substantially transverse to the axis and a retentive element 8, an appliance 4,6 having a hollow retainer cavity forming a retainer surface mateable on a mating surface on the abutment including a coupling means 7 for a resilient fit between the surfaces; however, Gerber does not show the cavity with an outwardly and downwardly taper relative to the axis and a mating tapered surface on the abutment. Baum teaches a dental prosthesis comprising an appliance 50 having a hollow retainer cavity with an outwardly and downwardly taper relative to the axis forming a retainer surface telescopically mateable on an upwardly and inwardly tapered mating surface on the abutment including a coupling means 58. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the appliance and abutment of Gerber to have the surfaces of Baum. One would have been motivated to make such a modification to have a smooth and tapered shape for improved fit between the surfaces resulting in precise mounting having the optimum retentive force between the appliance and abutment as taught by Baum. As to claim 8, the surfaces are in frictional engagement (column 2 line 47). As to claims 9-11, Baum shows the retentive element between the surfaces, in a plane generally transverse to the axis, and comprising an O-ring 38.

6. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lazzara. Lazzara discloses a dental prosthesis that shows the limitations as described above; however, Lazzara does not show the appliance of a splinted bar. It is held to be an obvious matter of choice to one of ordinary skill in the art as to the specific type of

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superstructure of the appliance. The specific appliance is not critical to the claimed invention.

Response to Arguments

7. Applicant's arguments filed February 7, 2003 have been fully considered but they are not persuasive. Applicant argues that Lazzara does not disclose a dental prosthesis. The applicant claims "dental prosthesis" as comprising *an appliance*, implant abutment, and implant, which the prior art shows. Furthermore, it is noted that column 5 line 57 describes Lazzara's invention used with a dental prosthesis and column 6 line 1 describes use with full or partial dentures. Lazzara discloses structure that is shown to have the limitations of "an implant abutment" *as claimed*, regardless of the terminology used such as receiving member. All the claim limitations are shown by the prior art. Applicant's arguments with respect to claim 7 have been considered but are moot in view of the new ground(s) of rejection. The term dental implant is interpreted broadly, and it is noted that to attach the same structure (abutment) to different attachments (implants) as taught by applicant's patent 5,556,280, shown in figures 1-4, is known in the art.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kataoka et al. (JP 04092658A) is cited to show the state of the art with respect to an implant dental prosthesis.

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Melba Bumgarner whose telephone number is 703-305-0740. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (703) 308-2582. The fax phone number for the organization where this application or proceeding is assigned is 703-308-2708.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.


Melba Bumgarner


KEVIN SHAVER 3/28/03
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700